

# HOUSE BILL REPORT

## ESB 6598

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### As Passed House:

March 3, 2004

**Title:** An act relating to accounting for the provision of wholesale telecommunications services by public utility districts.

**Brief Description:** Regulating the provision of wholesale telecommunications services by public utility districts.

**Sponsors:** By Senators Esser, Schmidt, Mulliken, Rasmussen, Parlette and Stevens.

### Brief History:

#### Committee Activity:

Technology, Telecommunications & Energy: 2/25/04, 2/27/04 [DP].

#### Floor Activity:

Passed House: 3/3/04, 96-0.

### Brief Summary of Engrossed Bill

- Clarifies that a public utility district offering wholesale telecommunications services may form a separate utility system or function for telecommunications services.
- Requires public utility districts (PUDs) to separately account for any revenues and expenditures for wholesale telecommunications services according to standards established by the State Auditor and consistent with the powers and duties granted to PUDs whether or not they form a separate telecommunications utility system or function.

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### HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** Do pass. Signed by 15 members: Representatives Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Anderson, Blake, Bush, Delvin, Hudgins, Kirby, McMahan, Romero, Tom, Wallace and Wood.

**Staff:** Pam Madson (786-7166).

### Background:

The powers of public utility districts (PUDs) and port districts are governed by statutes. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied powers that are necessary for accomplishing their primary purposes.

In 2000 PUDs and rural port districts, that were in existence in 2000, were authorized to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract. A further statutory declaration states that PUDs and rural port districts may not provide telecommunications services to end users. "End user" is not defined in statute, but a 2001 Attorney General's opinion concluded that "end user" means "retail customer," and that a PUD or rural port district may not use an interlocal agreement to sell or lease telecommunications facilities or services to other public agencies where the agency is the end user.

When districts establish a separate utility function to provide wholesale telecommunications services, they must keep separate accountings of revenues and expenditures for their wholesale telecommunications activities. Revenues from the wholesale activities must be used to pay off the costs incurred in building and maintaining the telecommunications facilities until such time as the instruments used to finance the telecommunications facilities are discharged or retired.

Districts are allowed to combine certain separate utility functions in a single utility and combine the funds or accounts of the separate utility functions into a single fund or account. Those separate utility functions or systems that may be combined include electrical energy, domestic water, irrigation, sanitary sewer and storm sewer systems.

Districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions. PUDs and rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

PUDs and rural port districts are required to ensure that their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential among its wholesale customers. The Washington Utilities and Transportation Commission (WUTC) may review a district's wholesale telecommunications rates, terms, and conditions if petitioned to do so by a wholesale customer.

The State Auditor's Office, as one of its duties, prescribes uniform budgeting, accounting, and reporting systems for local governments.

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### **Summary of Bill:**

A PUD providing wholesale telecommunications services is not required to establish a separate utility system or function. But a PUD providing wholesale telecommunication

services must separately account for any revenues and expenditures for the services according to standards established by the State Auditor and consistent with the powers and duties granted to PUDs.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** There are ambiguities that remain in the law that was passed in the 2000 legislative session allowing PUDs to provide wholesale telecommunications services. This bill now represents broad agreement among the stakeholders but has been whittled back from the version that was introduced in the Senate. This bill requires that a PUD separately account for expenditures for telecom services. Separate accounting requirements are very important to the success of this telecommunications authority. People in PUD districts deserve to know what is going on and they will be able to judge, through election of their commissioners, what kind of policies they want relative to telecommunications. They need the baseline of information. The public accountability in this bill is important and can help shine the light on any abuses of this authority. There are currently partnerships between PUDs and private providers to benefit customers, primarily in rural areas. The PUDs have recently worked with the Auditor's Office and the industry to clarify reporting and accounting requirements. There are still unresolved questions that need additional discussion and resolution. It would be beneficial to continue to discuss and continue to work on other unresolved issues.

**Testimony Against:** None.

**Persons Testifying:** Senator Esser, prime sponsor; Ron Main, Broadband Communications Association of Washington; Gary Gardner, Washington Association of Internet Service Providers; Bill Judge; Cliff Webster, Verizon Northwest; Elaine Davis, Fair Competition Alliance; Dave Warren, Washington Public Utility Districts Association; and Don Dennis, CenturyTel/Washington Independent Telephone Association.

**Persons Signed In To Testify But Not Testifying:** None.